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# affirmation



Ontario  
Human Rights  
Commission

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## Sikh turbans and the police

by W. Gunther Plaut

Orthodox adherents of some religions often find it difficult to practise their faith completely and meticulously in a 'diaspora' setting. What appeared natural and acceptable in another environment runs into roadblocks in ours. Sabbath observance by Jews and Seventh Day Adventists is the most frequently cited problem of this kind. But there are others. Of these, dress and hirsute appearance have lately become prominent issues that have both psychological and legal aspects.

To take one example: Letting one's hair grow is a commandment that may engender obstacles of the psychological kind. The vast majority of Canadian men do not observe any restriction on their cranial or facial appearance, and someone who does (be he Sikh or Jewish or a follower of Hare Krishna and others) at once sets himself visually apart from the rest of the population and publicly proclaims his religious background and conviction.

Now, people who make this choice in order to follow their religious requirements are not unaware that such distinctiveness may encourage prejudices in the minds of some. 'These people are really not fully Canadian; their very appearance

bespeaks their alienness,' is a sentiment which, regrettably, is not absent from our society. The person who nonetheless decides to abide by his religious tradition must therefore be willing to pay a significant price.

If psychological barriers are formidable, the legal obstacles to observance can be even more serious. The Supreme Court of Canada has ruled (in the 'Bindher case') that on a construction site a Sikh may not insist that he be allowed to wear his turban (another commanded observance) in preference to a safety helmet. In such a case, considerations of public health and welfare were

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Photo: Metropolitan Toronto Police

## Chairman appointed president of CASHRA



Canon Borden Purcell, chairman of the Ontario Human Rights Commission, was appointed president of the Canadian Association of Statutory Human Rights Agencies at its annual meeting in May 1986. Seen with him here are (left) Noel Kinsella, one of the founders of CASHRA and chairman of the New Brunswick

Human Rights Commission and (centre) Nicole Trudeau-Berard, immediate past-president of CASHRA and vice-president of the Quebec Human Rights Commission. See the 'Chairman's corner', page 5.

## Racism in the workplace

by Leslie Blake-Côté

Confronting discrimination, particularly racism in the workplace, is indeed a formidable task. Bad economic times serve to exacerbate the problem, which is deeply rooted in history as well as in people's attitudes. This is borne out by the increasing number of cases that have been filed with the Ontario Human Rights Commission over the last few years. The number has almost tripled since 1981; 80 per cent of complaints filed in 1985/6 dealt with employment and 17 per cent involved the grounds of race/colour.

However, this serious problem is not without solutions. Although most human rights cases regarding harassment and discrimination in the workplace are filed against employers and individuals, unions are now recognizing that they, too, share the responsibility of not only protecting their members, but also of ensuring that unions themselves are not the perpetrators of discrimination.

In the forefront of an attempt to deal with racism in the workplace is the Ontario Federation of Labour's 'Racism Hurts Everyone' campaign. When it was introduced in 1981, the campaign aimed at emphasizing the seriousness of the problem. Now it has in place a

concrete program to combat racism in the workplace as well as a team to implement it.

The 800,000-member federation, with its 23 unions and over 3,000 locals, has spent some \$275,000 on materials, seminars and workshops to train union members to deal with racism in the workplace.

Canon Borden Purcell, chairman of the Ontario Human Rights Commission, welcomed the campaign. 'Racism in any form is an evil that can destroy the social fabric of society,' he says. 'Government, organizations and individuals must work together to

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## Sikh turbans and the police continued from page 1

deemed to supersede the religious prerogatives of the wearer. In a choice between two desirable ends—public safety and religious freedom—the Court, in this case, gave preference to the former over the latter.

But when overriding considerations are not at issue, religious freedom will, and should, get the nod. Thus, the Metropolitan Toronto Police now permits a Sikh to wear a turban on duty in preference to the customary officer's cap. To be sure, this is not an ordinary turban; it has been specially designed in the traditional blue colour with the red stripe of the regular police cap, and features the officer's badge. The regulations governing the Toronto police uniform have been amended to provide for this 'second' cap, which is distinctly a police accoutrement and, at the same time, fulfils the requirements of orthodox Sikh practice.

In addition, the 'clean shaven' rule of the police, which forbids facial adornments, except a moustache of limited size, has also been amended to permit a Sikh to wear his religiously required beard.

That there would be citizens complaining about the 'terrible' breach of police etiquette was to be expected. The Metropolitan Toronto Police Association also has voiced

its protest. It believes that uniformity of appearance is a great asset to the police and that disparate clothing and bearded faces will breach this desirable show of common adherence to the code governing dress and appearance and thereby diminish police authority.

I like to believe that the majority of Torontonians will, however, applaud the new regulation that acknowledges the multicultural nature of our society and constitutes a desirable and proper interpretation of the *Human Rights Code* and its intent. Yes, there is something to be said for uniformity, but there is also something to be said for demonstrating that our society is hospitable to the fullest possible exercise of one's religious duties. In this conflict of two desiderata the commission has given the nod to the latter. I applaud the police commission, which is chaired by Clare Westcott, for its courageous decision. To me, the beturbaned police officer is an encouraging and satisfying sight. Our police and our whole community are the better for giving visible testimony to the worth of religious freedom and the diversity of our people.

*Dr. Plaut is editor of Affirmation*

## Commission gets new vice-chairman, commissioner



Vice-Chairman R. Lou Ronson



Commissioner Abel Joseph Diamond

Premier David Peterson has announced that, effective June 2, 1986, Ontario Human Rights Commissioner R. Lou Ronson be designated vice-chairman of the commission for the balance of his term of office, which runs until

February 18, 1988, and that Abel Joseph Diamond be appointed a member of the Ontario Human Rights Commission for a three-year term.

Congratulations to them both.

## Race relations policies needed in schools

by Julian Dudley

Towards the end of March 1986, educators from throughout the province gathered in Toronto to consider the implementation of anti-racism policies in the schools of Ontario.

Delegates to the Provincial Conference on Race and Ethnocultural Relations came from school boards and cultural organizations to examine the current state of school curricula and policies as they relate to and reflect the multicultural character of Ontario society.

The stated objectives of the conference were:

- to encourage school boards without a race relations policy to develop and implement such a policy;
- to encourage those boards with existing policies to enhance their policies;
- to encourage school boards to develop multicultural leadership programs for their students;
- to develop the most effective methods for responding to racial discrimination in the schools; and
- to explore appropriate assessment and program planning procedures, realistically identifying student achievement and potential, with an eye to finding more suitable student placements.

It was readily apparent that very few of the 186 existing school boards in the province have a definite policy regarding minority relations. As well, there is little in the way of consistent, systematic procedures for determining school curricula to ensure that the education given the pupils reflects the multicultural nature of society and attempts to transfer egalitarian values to the student. The 850 participants were there to address that and other issues, and they looked for assistance to the 150 resource people and presenters representing

diverse groups and interests. Presentations at the seminars fell into four distinct groupings: Race Relations Policies, Curriculum, Community Relations, and System and Staff Development. Within these groupings, a wide variety of topics were covered, ranging from the teaching of anti-racist values to techniques necessary to facilitate liaison between the schools and the wider community.

As a special presentation, a generic race relations policy was distributed and presented to the closing plenary session by the Race Relations Division of the Ontario Human Rights Commission and served as a model for school boards to follow in designing and implementing their own policies.

The respective roles of government and community organizations in the formulation of anti-racism policies was discussed by a panel of representatives from government ministries and the ethnic community. The participation of the general public in the decision-making process was emphasized, and liaison with school boards was approved and encouraged. Proposals for increased governmental involvement were also reviewed, and the various ministries re-iterated their commitment to the fight against racism in all areas of Ontario society.

The conference was seen by all to be a positive step towards the promotion of egalitarian values in the school system. If Ontario is to be a truly multicultural society of equals, then, certainly, the schools have a responsibility to promote acceptance of all races and religions in the minds of the young people entrusted to them. The conference provided definite evidence of the school boards' willingness to do so.

*Julian Dudley is a student at Osgoode Hall Law School, and worked with the commission during the summer of 1986.*

## What everyone should know about dog guides



1. A dog guide is *not* a pet but a highly trained animal whose chief responsibility is to guide a blind person from place to place safely and independently.

2. The dog guide is highly intelligent, but does not possess any supernatural or unusual powers. Instead, the dog reacts to specific commands given by the owner, such as 'Left', 'Right', 'Forward', and so on. By following these instructions, the dog will guide the owner to his or her destination. The dog will also disobey a command that might place them in a hazardous situation.

3. All dog guides, regardless of their breed or school, can be recognized by the leather harness and the U-shaped handle, which is held in the owner's left hand.

4. If a dog guide is wearing a harness, **DO NOT DISTRACT OR**

**TOUCH THE DOG WITHOUT THE OWNER'S PERMISSION.** Such an action may be dangerous to them both.

5. In July 1976, a law was passed in Ontario giving any blind person accompanied by a dog guide the right to enter any public place, including restaurants, snack bars, theatres, hotels and all forms of public transportation. The dog guide has been specially trained to lie quietly under a chair or table or sit in a corner until needed.

6. Even though blind persons and their dog guides are protected by this law, they need your help and understanding to be part of your community. If you're not sure about what to do when you meet a blind person with a dog guide, please ask.

From a pamphlet produced by CNIB, Public Education Department



WHEREAS the Government of Ontario actively supported the International Year of Disabled Persons in 1981, proclaimed by the United Nations, and

WHEREAS the General Assembly of the United Nations Organization has proclaimed the period of 1983 to 1992 to be the Decade of Disabled Persons, and has adopted the World Programme of Action Concerning Disabled Persons, and

WHEREAS the Government of Ontario fully supports the principles and ideals set forth by the United Nations and is committed to the goals of the fullest possible participation and equality of opportunity for persons with disabilities in the social and economic life of the province, and

WHEREAS the Government of Ontario recognizes the vital role of organizations interested in promoting an understanding of the issues facing persons with disabilities, and in pursuing initiatives and programmes to meet their special needs.

NOW THEREFORE BE IT KNOWN THAT the Government of Ontario, does hereby proclaim 1983-1992 the Decade of Disabled Persons, and requests the citizens of the Province of Ontario to join in the recognition of the role of disabled persons and their organizations, in the planning and implementation of Ontario's response to the World Programme of Action Concerning Disabled Persons, in accordance with this Declaration of Principles which will guide governmental activities.

#### PRINCIPLES

- 1 The dignity, independence and potential of persons with disabilities will be respected in all aspects of life.
- 2 Persons with disabilities have equal rights and equal obligations in common with all citizens to participate in and contribute to community life.



## PROCLAMATION OF THE DECADE OF DISABLED PERSONS

3 Efforts will be made to increase public knowledge and awareness of the abilities and needs of persons with disabilities, in order to break down barriers which exist due to lack of understanding and outmoded attitudes.

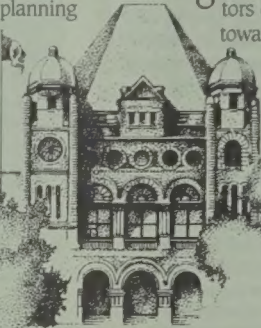
4 Public co-operation will be sought to promote positive action in broadening access of persons with disabilities into the life of the community.

5 Services and programmes will be aimed at integrating persons with disabilities into existing social and economic structures.

6 Minimum standards will be sought where possible for the provision of programmes and services to persons with disabilities throughout Ontario, notwithstanding rural isolation and local economic conditions.

7 The development and participation of organizations representing persons with disabilities is of vital importance in identifying needs, expressing views on priorities, evaluating services, advocating changes and promoting public awareness. This role will be encouraged.

8 Consultation will take place among government and all sectors of society to ensure that co-ordinated efforts are made towards preventing the occurrence of disability, and in facilitating the rehabilitation of those who are disabled, as well as enhancing their quality of life.



PREMIER OF ONTARIO

MINISTER RESPONSIBLE FOR DISABLED PERSONS

## ONTARIO POLICY ON RACE RELATIONS

The Government of Ontario recognizes that the diversity of our community has brought cultural, social and economic enrichment to the province and its residents.

The government also recognizes that racial minorities often encounter barriers to their full participation in society. The government is committed to equality of treatment and opportunity for all Ontario residents and recognizes that a harmonious racial climate is essential to the future prosperity and social well-being of this province.

Therefore the government declares that:

I. Every person in Ontario has the right to a life free from racial discrimination and prejudice.

II. The government will take an active role in the elimination of all racial discrimination, including those policies and practices which, while not intentionally discriminatory, have a discriminatory effect. To this end, the government is committed to:

(a) Employment equity policies and practices within the public service and throughout Ontario that ensure equality of treatment and opportunity through affirmative strategies.

(b) Government services to the public that reflect the particular needs and perspectives of racial minorities.

(c) A positive and balanced portrayal of racial minorities in the government's communications and advertisements.

(d) Appointments to agencies, boards and commissions that ensure these bodies fully reflect the racial diversity of Ontario.

(e) The elimination of racial prejudice and negative stereotyping and their effects.

III. The government will also continue to attack the overt manifestations of racism and to this end declares that:

(a) Racism in any form is not tolerated in Ontario.

(b) All doctrines and practices of racial superiority are scientifically false, morally reprehensible and socially destructive, are contrary to the policies of this government, and are unacceptable in Ontario.

(c) The rights to equal treatment without racial discrimination guaranteed in the Ontario Human Rights Code will be rigorously enforced.

(d) Racially motivated offences will be met with the full force of the law to ensure the protection of the dignity and the safety of all persons in Ontario.

IV. The Race Relations Division of the Ontario Human Rights Commission will develop policies and programmes to promote harmonious race relations in this province. In particular it will promote and evaluate activities on racial issues by the Ontario government, its agencies and the private sector to assist in the achievement of this goal.

David Peterson  
Premier of Ontario

Ian Scott  
Attorney General, Chairman of  
Cabinet Committee on Race Relations





# A South Asian Youth Perspective

by Raj Chopra

Earlier this year, the Race Relations Division of the Ontario Human Rights Commission, in co-operation with the South Asian Youth Committee, organized a conference for South Asian youth. The conference was entitled 'Future Directions—A South Asian Youth Perspective', which, for the first time, provided a forum for youth of South Asian ancestry to explore and discuss significant issues currently affecting them in Canadian society, unique problems they experience and their possible solutions.

Approximately 550 young people between the ages of 15 and 24 years, teachers, community workers, parents and agency representatives attended the day-long conference, which took place at Central Technical Secondary School in Toronto.

His Honour, Lincoln Alexander, Lieutenant-Governor of Ontario, inaugurated the conference and encouraged all those present to take a leadership role in all spheres of Canadian society. Dan McIntyre, the Race Relations Commissioner for Ontario, welcomed all participants and expressed his appreciation of the calibre, dedication and efforts of the youth committee members in organizing a well-deserved event. Chief Jack Marks of the Metropolitan Toronto Police Force brought greetings from the force and encouraged the young people to explore a career in policing with the Metropolitan Toronto Police Force. The conference continued with a showing of the film, *A Sense of Family*, recently produced by the National Film Board, which presents an enlightening insight into the problems faced, and

contributions made, by South Asians in Canada since the beginning of this century.

During the day, workshops on the following topics were held:

## Employment

### — Getting a Job and Job Opportunities

This session focused on discussions pertaining to resources and services available for job hunters, qualifications required for different careers, writing résumés and presenting oneself at interviews, job opportunities and 'fields of the future'.

### — Discrimination in the Workplace

This session provided an insight into various forms of discrimination and how to deal with them, services offered by the Human Rights Commission and case studies including the 'Persecution Myth', etc.

## Education

### — The Transition From High School to University

This session looked at the importance of overall achievement, academic and social misconceptions about post-secondary education and alternatives to universities and colleges available to high school graduates.

### — Insight into South Asian Heritage

This session provided insight into the historical migration patterns of South Asians, achievements of the South Asian community in the areas of culture, science and the arts and the importance of maintain-



The Honourable Lincoln M. Alexander, Lieutenant-Governor of Ontario (centre), with participants of the South Asian Youth Conference

ing one's heritage as well as integrating into Canadian society.

## Social/Family Issues

### — Peer/Parental Pressure regarding Academics

### — Peer/Parental Pressure regarding Dating and Friends

These sessions explored various career opportunities, avoiding tunnel vision of one's elders, how to deal with peer pressure, the importance of positive parental reinforcement, views of cross-cultural dating, friendships between parents and children and cultivating responsibility and trust.

Key professionals on the above topics, who represented the government, educational institutions and industry, acted as resource persons and presented stimulating highlights.

The conference wrapped up in the

evening following brief remarks by the chairman of the Ontario Human Rights Commission, Canon Borden Purcell, William McCormack, deputy chief of the Metropolitan Toronto Police Force, and Dr. Sam Ifejika, manager of the Race Relations Division.

This conference has facilitated in initiating a dialogue among South Asian youth on important issues arising in the areas of education, employment and social/family life. As a highly successful event, this has helped to bring to the fore some of the pressing problems currently faced by young South Asians and the role of the government in facilitating changes and in assisting them to integrate into Canadian society.

Raj Chopra is an officer with the Race Relations Division of the Ontario Human Rights Commission.

## Age Discrimination

by Yan Lazor

A board of inquiry recently ruled that the Board of Commissioners of Police for the Town of Smiths Falls had discriminated against John George Underwood when it failed to consider his application for employment because he was 40 years of age.

The police commission contravened section 4(1) of the *Human Rights Code*, which gives individuals the right to be treated equally with respect to employment without discrimination because of age.

The evidence showed that during the course of the investigation of the complaint by the Human Rights Commission, the police chief and members of the police commission had indicated that age was a consideration in Mr. Underwood's elimination from the employment competition. The board of inquiry came to the conclusion that Mr. Underwood's application was set aside simply and solely because he was 40 years of age. The respondent's only witness admitted that Mr. Underwood's

application was superior to that of one of the successful candidates. The chairman of the board of inquiry, Mr. H.A. Hubbard, ruled that the discrimination was deliberate and was engaged in wilfully and recklessly.

During the course of the investigation by the Ontario Human Rights Commission, the lawyer representing the board of commissioners of police prevented the investigator from making copies of documents as he is authorized to do under the *Human Rights Code*. The board of inquiry noted that this reluctance to co-operate with the human rights investigator verged on obstructing him in his duties.

A summons was served on the police chief requiring him to attend and produce the documents at the start of the hearing. Initially, he refused to produce the documents, but after a great deal of resistance, some of the documentation was

## New device makes personal computers accessible to disabled people

Designing Aids for Disabled Adults (DADA), a non profit group, has developed a product that bypasses the IBM keyboard and allows data entry through alternative input devices. The product emulates the IBM keyboard by translating signals from a simple on/off switch into commands and characters recognizable by the computer. Several translation methods are available, including morse code and scanning (keys are displayed on the lower portion of the screen and are individually selected when a switch is pressed). Commercially available keyboards designed specifically for disabled persons can now be used with IBM computers and this new device. The product is transparent and does not interfere with the execution of most commercially available software.

Until the development of this device, the Apple II computer was the only computer accessible to disabled individuals who require special input methods.

The device is being manufactured by a Toronto company and became available in the U.S.A. and Canada in June.

DADA was formed in 1985 with the following objectives:

- to research and develop low-cost technical aids for disabled individuals;
- to help train rehabilitation staff and disabled adults in the use of existing and new technology;
- to encourage the technical community to become more involved in socially beneficial applications of technology

DADA has a staff of five, and over fifty volunteers working with the organization. Most of these volunteers work in the community, teaching disabled people how to use the computer.

DADA has been assisted in the development of this device by the Applied Program Technology Unit of the Ministry of Community and Social Services, and by IBM Canada.

For more information, or for a demonstration of the device, call Corrina Vel at 533-4494.

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## Editorial

### Turbans, beards and yarmulkes

Elsewhere in this issue (p.1) the forward looking action of the Metropolitan Toronto Police Commission—allowing a baptized, practising Sikh to wear, while on duty, a specially designed turban as well as his beard—is treated in some detail. The sensitivity to a religious minority thus displayed stands in glaring contrast to the obduracy of the U.S. Navy in a similar case and to the support given it by an American Federation Court. The comparison deserves some comment.

A Jewish lawyer, who is a commissioned officer in the U.S. Navy, was assigned to the Adjutant-General's department and given the task of pleading the navy's case in courts martial and other legal proceedings. The officer is an Orthodox Jew, who keeps his head covered at all times. This presents no problems outdoors, where the regular navy cap helps him to fulfil his religious precept.

It is a different matter indoors, where the service requires that, at official functions (such as legal advocacy), all headgear be removed. The officer requested permis-

sion to wear his yarmulke on such occasions, but his superiors insisted that he abide by the general regulations. They said, in effect: If you want to practise your religion you can't do this kind of job; and if you can't do this kind of job, maybe you shouldn't be in the navy.

The officer, believing his right to have been infringed, brought the matter to court—and lost. The judges held that by entering the navy he had voluntarily subjected himself to the dress code of the service. It was the navy's privilege to judge that uniformity of dress and appearance was an important requirement for the maintenance of discipline. Hence the court could and should not interfere with this judgement, which, on the face of it, was neither discriminatory nor unreasonable, and, besides, was sanctioned by long practice.

In the light of this precedent and ruling, the courage and independence of the Metropolitan Police Commission is to be doubly commended. It is deserving of wide support and imitation.

### Sex Discrimination in athletic activities unconstitutional

by Yan Lazor

The Court of Appeal has ruled that section 19(2) of the *Human Rights Code* is unconstitutional and of no force and effect.

The Court's decision was rendered on April 17, 1986 in a case concerning Justine Blainey, a young woman who, at the age of 12 years, was not permitted to play hockey for a team in the Metro Toronto Hockey League because the regulations of the Ontario Hockey Association restrict eligibility for membership to male persons.

In a two-one split decision, the Court ruled that section 19(2) of the Code, which permits discrimination in all athletic activities in this province by reason of one's sex, is inconsistent with the equality rights provision of the Canadian Charter of Rights and Freedoms and could not be defended as a reasonable limit under section 1 of the Charter.

The Court noted that a distinction based on public decency or for the physical protection of participants would be reasonable, but no such

legislative purpose is disclosed by the broad language of section 19(2), which prescribes no limits and provides no guidelines.

The Court also noted that there was no evidence before the Court that males were being denied the right to full membership in participation in athletic organizations. Therefore, the Court was of the view that section 19(2) results also in adverse effect discrimination on females.

With the Court's declaration that section 19(2) of the Code is unconstitutional, Justine Blainey has been afforded the right to pursue her complaint before the Ontario Human Rights Commission.

The Ontario Hockey Association has applied to the Supreme Court of Canada for leave to appeal from the decision of the Court of Appeal.

*Yan Lazor serves as legal counsel for the Ontario Human Rights Commission*

## Chairman's corner



*Jim Merrish*

In previous issues of *Affirmation*, I have lauded our country's long-standing role and involvement in human rights both at home and abroad. Canada has recognized its obligations under the international documents to which it is a signatory and confirmed its commitment to the elimination of discrimination and the promotion of equality of opportunity.

A federal-provincial-territorial ministerial conference on human rights, held in 1975, created a new national organization called the Continuing Federal-Provincial Territorial Committee of Ministers Responsible for Human Rights. This committee, which meets at least twice a year, was established to provide and maintain the necessary liaison and consultation for Canada to meet its obligations under the international covenants. Ontario has been an active participant of the committee since its inception.

On a continuing basis, the ministerial committee, all provincial human rights agencies and the Canadian Human Rights Commission come together to review and discuss current issues and initiatives in the area of human rights and also our individual and collective responsibilities within the national and international contexts.

Ontario has recognized that we must not only promote and ensure human rights in our province and nation, but that we must also join with other provinces and nations to demand that other countries live up to their human rights commitments.

The Ontario Human Rights Commission has been privileged for the past 15 years to be a member of, and to be actively involved in, the Canadian Association of Statutory Human Rights Agencies. This year, 1986-87, I have the honour of being appointed its president.

Recently, the above-mentioned groups and organizations pledged their continuing support for the Second Decade for Action to Combat Racism and Racial Discrimination and renewed their governments' commitment to ongoing vigilance through enforcement of the criminal law and anti-discrimination legislation as well as through public education programs designed to create a heightened awareness, both throughout the province and the nation, of the importance of racial tolerance.

In particular, Canada and all its levels of government joined with other members of the common-

wealth in registering its abhorrence of apartheid and in condemning the practice and policy as an affront to the conscience of Canadians. CASHRA, at its annual meeting in May 1986, passed a resolution that stated in part:

'Mindful of the struggle against apartheid and human rights violations being led within South Africa by human rights organizations... 'be it resolved that CASHRA

1. expresses encouragement to human rights agencies who are engaged in the struggle against apartheid within South Africa;
2. calls upon non-governmental organizations and individual Canadians to continue to express solidarity with the victims of apartheid in South Africa; and
3. requests that members of CASHRA transmit this resolution to their respective governments, urging that appropriate measures be taken to demonstrate, unequivocally, Canadian rejection of apartheid and human rights violations in the Republic of South Africa.'

I firmly believe that any lessening of human rights, anywhere, affects all of us. This belief was strengthened three months ago when the people of Ontario were graced with the presence and words of a man whose commitment, in the words of Premier David Peterson, to justice and efforts to pursue peace, serve as hope and inspiration to all Ontarians.

In his address to the Legislative Assembly on May 30, 1986, the Right Reverend Desmond Tutu, Bishop of Johannesburg said: '...this outstanding honour... gives me the opportunity of saying thank you very much to all of you for that concern and that caring, for that upholding of those who are going through a traumatic experience as they learn painfully... that ultimately you can be human only together, that you can survive only together, that you can be free only together.'

Let us take these words, and the passion with which they were delivered, to continue the struggle to ensure that human rights legislation will truly represent not only an inspirational tribute to the human spirit, but also a commitment to the furtherance of universal social harmony. We must all work together to build the society we deserve—one based on equal opportunity, quality of life, dignity and mutual respect.

### Letters invited

We welcome your reaction to *Affirmation*. Write us—we are looking for your participation.



# Pre-employment medicals in violation of the Code

by Tanja Wacyk

The Ontario Human Rights Commission has found that employers frequently rely on the limited information provided through pre-employment examinations to screen out handicapped applicants rather than make a determination of whether or not the person can perform the essential duties of the job.

Having reviewed the matter of employment-related medical examinations in light of the current provisions of the Code, it is the view of the commission that pre-employment medicals, when part of the 'application' process, are in violation of section 22(2). That section states that it is an infringement of the right under section 4 to equal treatment with respect to employment where a form of application for employment is used ... that directly or indirectly classifies or indicates qualifications by a prohibited ground of discrimination.

In order to ensure compliance with the Code, and to enable persons with handicaps to exercise their right to equal treatment in the employment selection process, the commission adopted the following position with regard to employment-related medicals at its January 1986 meeting:

1. All employment-related medicals as part of the initial application process are prohibited, in accordance with section 22(2) of the Code.
2. Employment-related medicals will be considered 'reasonable and bona fide' in accordance with section 10(a) of the Code

## Age Discrimination

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made available. With respect to this conduct, the chairman of the board of inquiry noted in his decision that the chief of police chose to disregard a duly issued summons, leaving himself open 'to punishment by the Supreme Court in the same manner as if for contempt of that court for disobedience to a subpoena' as was spelled out in the summons itself. The chairman noted in his decision that the cavalier treatment accorded the summons by the chief of police verged on contempt of the board of inquiry.

There was evidence that there was substantial and protracted injury to Mr. Underwood's dignity and self-respect and that there was deprivation of his right to freedom from discrimination. In his decision, Mr. Hubbard stated that the injury suffered by Mr. Underwood was made more serious 'by the discrimination having been practis-

only if conducted under the following circumstances:

- (a) after a written offer of employment;
- (b) where the specific physical abilities required to perform the essential duties of a position have been identified;
- (c) where the medical examination is limited to determining the person's ability to perform the essential duties of the position;
- (d) where the essence of the business would be undermined or the safe performance of duties threatened by persons who lack these specific physical abilities or have a certain physical condition;
- (e) where reasonable accommodation for those failing to pass the test is included as part of the process.

It should be noted that the above policy is not intended to inhibit in any way the employer's ability to determine the suitability of job applicants for a particular position. It is simply the view of the commission that this could be more fairly and adequately done during the course of the personal interview. Section 22(3) of the Code allows handicapped applicants to be asked directly, at this stage of the process, if they are capable of performing the essential duties of the position, and allows any potential impact of the handicap on work performance to be explored with the applicant.

Tanja Wacyk serves as legal counsel with the Ontario Human Rights Commission.

## Racism in the workplace

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speak out against racism, to develop educational programs and enforce strong legislation to combat it. Campaigns such as "Racism Hurts Everyone" are an integral part of this process.'

The impact of the campaign has already been significant. Wally Majesky, secretary-treasurer of the Ontario Federation of Labour, notes that at the last annual federation convention, unprecedented numbers of union members took to the floor to discuss the issue of racism.

While the campaign is impressive, the evidence from the workplace indicates that drastic change is still a long way off. OFL research has revealed that blatant racial discrimination remains, the most common forms of which are name-calling, joke-telling and co-worker harassment. Majesky admits that there has been a good deal of racism in the trade union movement, but warns: 'We must be sure it doesn't happen in our own union.'

As part of its 'Racism Hurts Everyone' campaign, the OFL encourages its union locals and councils to form human rights committees. According to Janis Sarra, OFL human rights director, some 150 locals have participated.

For example, John Bennett, Ontario human rights commissioner and education chairman for the United Steel Workers of America, District Six (Ontario), says that the district introduced a human rights committee in the spring of 1985 and that he hopes other locals will follow suit. The USWA, which is an affiliate of the OFL and is the largest industrial union in Canada, has 80,000 members in some 420 locals in Ontario alone.

Another major objective of the campaign is to encourage local unions to include a strongly worded human rights clause in their collective agreements. Peter Hurd, lecturer in the Labour Relations course at the University of Toronto, notes that the existing non-discrimination clauses relate to general union activity. However, a forceful human rights clause would allow the union to bring the matter of a discriminatory incident before the employer.

On this point there is consensus. Majesky sees no problem with having the collective agreement reflect section 4 of the *Human Rights Code*, which prohibits discrimination in employment on all grounds. What's more, Majesky feels that the unions have equal responsibility with the employer to see that discrimination does not occur in the workplace.

Race Relations Commissioner Dan McIntyre believes that every union has a moral responsibility to get a human rights clause into its collective agreement. 'It should set out what constitutes harassment and build in what the process is and the procedures for dealing with it. This would enhance and tighten the agreement and would resolve a lot of those complaints that are better handled by the parties themselves.'

While racism is not going to disappear from the workplace overnight, Canon Purcell is optimistic. 'It is public policy in this province to recognize the dignity and worth of every person,' he says, 'and to provide for equal rights and opportunities. With labour taking an increasingly active role in dealing with the problem, I am confident their efforts will soon bear tangible results.'

Leslie Blake-Côté is an Ontario Human Rights Commissioner

## Case Study

### A single, older, handicapped woman

#### Allegations

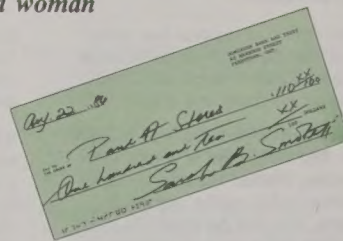
The complainant, a single woman, paid for a purchase at the respondent store with a personal cheque. She supplied identification and a home telephone number, as requested. The sales clerk asked her for a business phone number, and when the complainant said she did not have one, the clerk asked whether she had a husband or relative to vouch for her. The complainant gave a friend's number, but felt humiliated by the question.

#### Findings

The respondent pointed out that requesting a second phone number at which to reach someone paying with a personal cheque was a reasonable precaution, and that any insult or hint of discrimination against single women was unintended and only due to unfortunate phrasing on the clerk's part.

#### Settlement

The respondent issued a letter of apology for the misunderstanding



and as a token of their regret offered the complainant her choice of free merchandise up to the value of the original purchase.

The complainant, who is older, handicapped and alone, but proud of her ability to live in dignity and joy, took advantage of this offer and felt the respondent was genuinely determined to avoid such mishaps in the future. She then wrote to the commission expressing her feeling that equality for all can never be taken for granted and that it is up to us all to be continuously vigilant.

From the commission's case file

Yan Lazor is a legal counsel with the Ontario Human Rights Commission.